

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE F. BOOKER and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, VA

*Docket No. 02-273; Submitted on the Record;
Issued February 27, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error; and (2) whether appellant has established that she sustained a recurrence of disability on December 8, 2000 causally related to her June 1994 employment injury.

On November 4, 1993 appellant, then a 33-year-old automated mark-up clerk, filed an occupational disease claim alleging that she sustained pain in the right and left wrists and left elbow due to factors of her federal employment. She did not stop work. The Office accepted the claim, assigned file number A25-0436465, for bilateral epicondylitis.

By decision dated March 6, 1995, the Office granted appellant a schedule award for a 6 percent permanent impairment of her left arm and an 11 percent permanent impairment of her right arm. The period of the award ran for 53.04 weeks from October 20, 1994 to October 26, 1995.

On May 16, 1997 appellant filed a notice of recurrence of disability on June 9, 1994 causally related to her November 1993 employment injury. By letter dated September 29, 1997, the Office informed appellant that it was adjudicating her claim as a new occupational disease. The Office assigned the claim file number A25-512504 and, by decision dated February 9, 1998, denied the claim on the grounds that appellant did not establish a condition causally related to factors of her federal employment. In a decision dated May 22, 1998, the Office vacated its February 9, 1998 decision and accepted the claim for right shoulder impingement. The Office authorized an arthroscopic decompression of the right shoulder including a distal clavical resection.¹

¹ Appellant retired on disability.

By decision dated August 31, 1999, the Office denied appellant's claim for an increased schedule award in file number A25-043465. She requested reconsideration on December 9, 1999. In a decision dated February 15, 2000, the Office denied modification of its August 31, 1999 decision.

By decision dated March 7, 2000, the Office issued appellant a schedule award in file number A25-0512504 for a 12 percent permanent impairment of the right upper extremity. The period of the award ran for 37.44 weeks from November 19, 1999 to August 7, 2000.

In letters dated March 14 and 21, 2000, appellant again requested reconsideration of the Office's August 31, 1999 decision in file number A25-0436465.

In a decision dated May 8, 2000, the Office denied modification of its August 31, 1999 decision.

On January 18, 2001 appellant filed a claim for a recurrence of disability on December 8, 2000 due to her June 1994 employment injury. On the claim form, an official with the employing establishment noted that appellant had retired effective April 25, 1997. Appellant indicated that she continued to have problems with her shoulders, including chronic tendinitis.

By decision dated May 1, 2001, the Office denied appellant's claim on the grounds that the medical evidence did not establish that she sustained a recurrence of disability on December 8, 2000 causally related to her accepted June 9, 1994 employment injury in file number A25-0512504.

In an internal memorandum dated May 1, 2001, an Office claims examiner agreed to double file number A25-0512504 into file number A25-0436465.

By letter dated July 5, 2001, faxed to the Office on August 2, 2001, appellant requested reconsideration of her claim assigned file number A25-0512504. In a decision dated August 22, 2001, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to present clear evidence of error.

The Board finds that the Office improperly determined that appellant's August 2, 2001 request for reconsideration was not timely filed.

Section 8128(a) of the Federal Employees' Compensation Act does not entitle a claimant to review of an Office decision as a matter of right.² This section vests the Office with discretionary authority to determine whether it will review an award for or against payment of compensation.³ One such limitation is that a claimant must file his or her application for review within one year of the date of the decision denying or terminating benefits.⁴ The Board has

² 5 U.S.C. § 8128(a); *see Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607(a).

found that the imposition of this one-year limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a).⁵

In this case, on August 2, 2001, appellant requested reconsideration of the denial of her claim assigned file number A25-0512504. The Office's last merit decision in file number A25-512504 was its May 1, 2001 decision denying her claim for a recurrence of disability on December 8, 2000 causally related to her June 9, 1994 employment injury. Appellant's August 2, 2001 request for reconsideration is within one year of May 1, 2001 and, therefore, is timely. In support of her request for reconsideration, appellant submitted a report dated June 18, 2001 from Dr. William D. Brickhouse, a Board-certified orthopedic surgeon and her attending physician. As the Office applied an inappropriate standard of review to appellant's timely reconsideration request, the Board will remand the case to the Office for consideration of her request for reconsideration pursuant to section 8128.

The Board further finds that appellant has not established that she sustained a recurrence of disability on December 8, 2000 causally related to her June 1994 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable and probative evidence, that the subsequent disability for which she claims compensation is causally related to the accepted injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁷

In support of her claim for a recurrence of disability, appellant submitted chart notes from Dr. Brickhouse. In a note dated December 8, 2000, Dr. Brickhouse discussed appellant's continued complaints of shoulder pain. He diagnosed rotator cuff tendinitis. In a note dated January 12, 2001, Dr. Brickhouse opined that appellant's shoulder problem was "an ongoing problem" and stated, "she has chronic rotator cuff tendinitis. [Appellant] also has chronic fibromyalgia. She has had an exacerbation of her rotator cuff tendinitis...." In a note dated February 26, 2001, Dr. Brickhouse listed findings of improved range of motion but continued complaints of pain. In his chart notes, however, Dr. Brickhouse did not discuss appellant's June 1994 employment injury or describe how her accepted employment injury caused a recurrence of disability beginning December 8, 2000. Therefore, his opinion is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated May 1, 2001 is affirmed. The decision of the Office dated August 22, 2001 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

⁵ See *Leon D. Faidley, Jr.*, *supra* note 2.

⁶ *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁷ *Id.*

Dated, Washington, DC
February 27, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member